

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

FILED UNDER SEAL

UNITED STATES OF AMERICA,)
) Crim. No. 2:CR:15-472
v.)
)
DYLAN STORM ROOF)

**UNOPPOSED MOTION TO EXTEND TIME FOR FILING REPLY TO
GOVERNMENT'S RESPONSE TO DEFENDANT'S
MOTION IN LIMINE AND SUPPLEMENTAL FARO PLEADING**

The government responded to the defendant's Motion in Limine, Dkt. No. 358, on Thursday, September 22, 2016. In the ordinary course, the defendant's reply would be due on Thursday, September 29, 2016. In the meantime, however, the Court has issued orders affecting discovery and deadlines involving two of the main issues being litigated in the Motion in Limine, and the government has responded to these orders with significant new information. The defendant therefore requests that the Court extend the deadline for filing his reply until Wednesday, October 5, 2016.¹ We understand that the government does not object to this extension. As noted, we propose extending the deadline for any government response, as well.

The defendant's Motion in Limine complained about discovery issues relating to both the Branch AME evidence and the FARO scans. The defense followed the Motion

¹ We anticipate pursuing our *Daubert* motion, but wish to review that in light of the new information provided by the government in its September 28, 2016 filings.

in Limine with a motion regarding Rule 16 compliance, Dkt. No. 418. The Court granted that motion by text order dated September 22, 2016, and ordered the government to respond by September 28, 2016. Dkt. No. 423. On that date, the government filed a lengthy response. Dkt. No. 443.

In its initial response to our Motion in Limine, the government also notified the defense that it did not intend to use certain FARO scans at trial.² It identified only one set of scans as proposed trial evidence, out of several which were provided in discovery. *See* Dkt. No. 425. The defense had previously misunderstood the significance of this set of scans, which had been inaccessible for technical reasons, but which had appeared to us to be underlying data for the others.³ With the government's assistance, we accessed the scans proposed for use at trial yesterday, September 28, 2016, for the first time. In light of the government's response, and to avoid confusion in the litigation, the Court has ordered that we supplement our FARO motions by Monday, October 3, 2016. Dkt. No. 429. Given that we have only just accessed the scans, and given yesterday's additional disclosures by the government, we do not believe this deadline to be practical.

Under this Court's rules, the customary response time for a reply brief is seven days. We request that the Court permit us to file our complete reply on the Motion in Limine, Dkt. 358, to include clarifications to our Rule 403 FARO objection, on

² The government previously had led us to understand that it planned to offer at trial *all* FARO scans that it had provided in discovery.

³ The parties conferred over the summer regarding the scans. We regret that we did not achieve more clarity at that time.

Wednesday, October 5, 2016. We propose to file any revised *Daubert* motion at the same time. This should also permit us to evaluate and address the new GPS-related disclosures included in the government pleading filed yesterday.⁴

For these reasons, we respectfully request that the Court permit the defendant to file his reply on the Motion in Limine, Dkt. No. 358, and the supplemental briefing called for in Dkt. No. 429, on or before October 5, 2016. We suggest that the government be permitted to respond by October 12, 2016.

Respectfully submitted,

s/ Sarah S. Gannett
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⁴We are unable to commit to addressing the numerous other new disclosures in Dkt. 443 in one week's time.